THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.7270 OF 2001

Dated: 25th October, 2005.

Between:

P. Pitchi Reddy … Petitioner

And

1. The Commissioner of Prohibition & Excise,

Andhra Pradesh, Hyderabad and others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.7270 OF 2001

ORDER :

This writ petition is filed questioning the order of the 2nd respondent – The Deputy Commissioner of Prohibition & Excise dated 21-2-2000 directing confiscation of the petitioner's vehicle as confirmed by the 1st respondent – The Commissioner of Prohibition & Excise in his proceedings dated 2-3-2001 as arbitrary and illegal.

The petitioner claims to be the owner of the vehicle – Tata Sumo bearing Regn. No. AP-27D-338. On 2-10-1999 the Prohibition and Excise Officials of the State Task Force and Sub-Divisional Prohibition & Excise Officer, Markapur intercepted the said vehicle on the ground that it was carrying 9 card-board boxes containing 432 nips of Tasker Fine Whisky duty paid liquor illegally without possessing valid permits. In pursuance thereof, confiscation proceedings were initiated and the petitioner was issued a notice under Section 12 of A.P. Prohibition Act, 1995 calling upon to show-cause as to why the vehicle should not be confiscated. It is not in dispute that the petitioner has submitted his explanation denying the allegations made and contending that the vehicle is not liable for confiscation since he had no knowledge of the offence. However, by order dated 21-2-2000 the 2nd respondent ordered confiscation of the vehicle in question. Though the petitioner preferred an Appeal, the same was also dismissed by the 1st respondent by order dated 2-3-2001. The said orders passed by the respondents 1 and 2 are under challenge in this writ petition.

The learned Counsel for the petitioner vehemently contended that the impugned orders passed by both the respondents 1 and 2 are not in conformity with the principles of law as laid by this Court in SHAIK GULAM RASOOL v. GOVERNMENT OF A.P. and P. GOKUL ANAND v. COMMISSIONER OF PROHIBITION AND EXCISE, holding that there cannot be confiscation unless it is established that the owner of the vehicle had knowledge about the offence.

In the case on hand, as rightly contended by the learned Counsel for the petitioner though the petitioner has raised specific plea that he had no knowledge of the offence, both the respondents 1 and 2 failed to advert to the said plea.

The impugned orders are cryptic and devoid of any reasons in directing confiscation of the vehicle in question.

In the circumstances, I am of the view that the impugned orders are liable to be set aside on that ground alone and the matter requires re-consideration on the basis of the explanation offered by the petitioner in response to the show-cause notice dated 2-12-1999 and in the light of the principles of law laid down by this Court in the above two decisions.

Accordingly, the impugned orders are set aside and the matter is remitted back to the 2nd respondent – Deputy Commissioner of Prohibition & Excise, Guntur for consideration afresh as indicated above and to pass appropriate orders in accordance with law.

The learned Counsel submits that pending the proceedings before the respondents, the vehicle was released in favour of the petitioner on furnishing Bank guarantee. If that be so, the vehicle shall remain in the custody of the petitioner till the conclusion of the proceedings subject to the condition that the Bank guarantee furnished by him is kept alive.

The Writ Petition is accordingly disposed of. No costs.

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25th October, 2005.

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